HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 2087 of 2001

Ram Kumar

Vs

Sardar Bhagat Singh

Approved for reporting.

~~Not approved for reporting~~

Date of decision 5.8.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2087 (M/S) OF 2001

(OLD NO. 26844/2000)

Ram Kumar son Shri Prabhu Dayal,
Resident of 236/1. Doiwala, Raishikesh Road, Ward No.2, Paragana Parva District Dehradun. .....Petitioner

Versus

Sardar Bhagat Singh of Shri Guru Dutt Singh
Resident of village Bhaniawala Pargana Parv,
District Dehradun. .....Respondent

Sri B.P. Nautiyal, Advocate, counsel for the petitioner.
Sri D.C.S. Rawat, Advocate, Counsel for the respondent.

Dated: 05.09.2006

Dated Rajesh Tandon, J.

Heard Sri B.P. Nautiyal, Advocate, counsel for the petitioner, and Sri D.C.S. Rawat, Advocate for the respondent.

2. By the present writ petition the petitioner has prayed for quashing the orders dated 19.9.1998, and 30.5.2000 annexure Nos. 6 & 7 to the writ petition passed by Judge Small Cause Court, Dehradun, and Additional District Judge, Dehradun, passed in S.C.C.R. No. 31 of 1998 Ram Kumar Vs. Bhagat Singh.

3. According to the case of the respondent-landlord petitioner is a tenant at the rate of rent of Rs. 250/- per month of house No. 23 Doiwala Ward No.2, Rishikesh Road, Dehradun. The respondent no. 2 has filed the suit for arrears of rent praying for the ejectment of the petitioner on the ground that the petitioner is in arrears of rent from 1.7.1993 to 31.8.1995 amounting to Rs. 6500/-. The landlord in paragraph-3 of the plaint has stated that on 12.9.1995 the petitioner has sent a reply that he is a tenant of Rs. 40/- per month and has paid the rent up to June 1995. The relevant paragraph-3 of the plaint is quoted below :-

3. यह कि प्रतिवादी की ओर 1.7.93 से किराया बाकी था अतः 31.8.95 को वादी ने प्रतिवादी से 1.7.93 से 31.8.95 तक 6500/— रू0 किराये की मांग की और उससे कहा गया कि वह किराया नोटिस प्राप्ति के एक मास के अन्दर अदा कर दें, परन्तु उसने किराया अदा नर्ीं किया और झुठा जबाब दिनांक 12.9.95 को दिया कि प्रतिवादी 40/— रू0 मासिक के किरायेदार हैं और उसने जुन 95 तक का किराया अदा कर दिया हैं प्रतिवादी का जबाब नोटिस कतई झुठ है। प्रगतिवउदी का यह कथन भी झुठ हैं कि वादी रसीद नही देता हैं। वादी का पुत्र ओंकार सिंह जब भी किराया प्रतिवादी से आया तो प्रतिवादी की डायरी में अपने हाथ से रकम जमा कर दी और अपने हस्ताक्षर कर दिये वादी का पुत्र ओंकार सिंह मेरा मुख्तार आम हैं और वही सारा कार्य करता हैं क्योंकि मैं वृद्ध हूं अतः प्रतिवादी इस कारण भी काबिल

बेदखली हो गया हैं। प्रतिवाउी ने जबाब नोटिस 12. 9.95 में किराया मनी आर्डर से भेजना कहा परन्तु कोई मनी आर्डर नही भेजा गया।

4. The landlord therefore, has claimed the rent from the petitioner to the following effect. The details have been given in paragrpah-7 to the following effect :-

7. यह कि वाद का कारण स्थान देहरादुन न्यायालय की सीमा के अन्तर्गत निम्न तारीखों पर उत्पन्न हुआ :–

1. वास्ते वसुली किराया 1.8.93 से 5.8.95 तक प्रत्येक मास की समाप्ति पर।

2. वास्ते बेदखली 5.9.95 को

3. वास्ते वसुलयावली हर्जाना बाबत नाजायज इस्तेमाल भवन 6.9.95 से आगे।

8. यह कि वास्ते अदायगी अधिकारी क्षेत्र कोर्ट फीस निम्न प्रकार किया जाता है :–

		मूल्यांकन	कोर्ट फीस
अ.	*वास्ते किराया दिनांक 1.7.93 से 5.9.95 तक*		*6540*
		817.50	
ब.	*वास्ते बेदखली एक वर्श के किराये पर*	*3000*	
स.	*वास्ते हर्जाना 250.00 मासिक की दर से 6.9.95*		*1500*
	597.50		
	से दखल के दिनांक तक		

कुल योग *11040.001415.00*

9. *वादी प्रार्थना करता हैं कि वादी के हित में व प्रतिवादी के विरूद्ध निम्न प्रकार से डिक्री प्रदान की जावे :–*

अ. *वास्ते वसुलयाबी किराया 6540.00 रू0 के लिए*

ब. *वास्ते बेदखली प्रतिवादी वाद ग्रस्त सम्पति जिसका पूर्ण विवरण वादपत्र के अंत में परिशिष्ट में दिया गया है।*

स. *वास्ते हर्जाना नाजायज इस्तेमाल 250.00 रू0 मासिक की दर से 6.9.95 से दखलों के दिनांक तक ।*

द. *समस्त वाद व्यय दिलाया जावे।*

b- *सुद दौरान व आयन्दा 1–20 सेकडा सालाना की दर से (एफ)अन्य कोई सहायता जो वादी के हित में व प्रतिवादी के विरूद्ध दिलायी जावे।*

5. A written statement was filed by the petitioner stating therein that he is a tenant at the rate of Rs. 40 per month, and he has paid the rent up to 5th July, 1996 and he has sent the money order from June 1995 to June 1996, which has been refused by the plaintiff.

6. On behalf of the plaintiff, the son of Bhagat Singh-landlord has appeared who has also acted as a power of attorney of the landlord. He has stated that the defendant has not paid the rent since July 1993. Similar statement has been

made by Sri Ashok Kumar/p.w.2. On the other hand the petitioner has stated on oath that the rent is Rs. 40 per month.

7. The Judge Small Cause Court has framed five issues. Issue no. 1 was framed regarding the rate of rent so far as the rent is concerned, it has been held that the petitioner is tenant at the rate of Rs. 40/- per month. So far as the default is concerned, the issues no. 2 & 3 were decided against the defendant and it was held that the rent was due with effect from 1-7-1993 which has not been paid in-spite of the notice dated 31.8.1995. The findings to that effect are quoted below :-

में स्पश्ट रूप से यह कथन किया हैं कि उस पर किराया दिनांक 1.7.93 से बकाया हैं तथा वाद पत्र में भी वादी ने किराया दिनांक 1.7.93 से बकाया होना बताया हैं । प्रतिवादी का यह भी कथन था कि विवादित भवन का 40/– रू0 प्रतिमाह किराया था तो भी उसे 40/– रू0 प्रतिमाह की दर से किराया जमा किये जाने की न तो रसीद दाखिल की है और न ही कोई विश्वसनीय साक्ष्य प्रस्तुत किया हैं। जब कि वादी ने स्पश्ट रूप से यह कथन किया हैं कि उसने दिनपांक 1.7.93 से किराये का भुगतान नही किया हैं। प्रतिवादी द्वारा जो कथित रूप से मनी आर्डर वादी को भेजा जाना बताया जाता है वह जून 95 से जुन 96 तक केवल 13 माह के किराये हेतु मु0 520/– रू0

भेजा जाना बताया जाता हैं जब कि नोटिस दिनांक 31.8.95 की तहसील दिनांक 5.5.95 को होने के पश्चात प्रतिवादी के लिये यह आवश्यक था कि वह 40/– रू0 प्रतिमाह के हिसाब से दिनांक 1.7.93 से दिनांक 31.8.96 तक 26 महिने का किराया 1040/– रू0 तथा नोटिस के खर्चे का भुगतान वादी को करता चुकी प्रतिवादी द्वारा उपरोक्त भुगतान नही किया गया अतः प्रतिवादी द्वारा भेजा गया मनी आर्डर दिनांक 25.6.96 के आधार पर यह नही माना जा सकता कि उसने कोई चुक नही की।

8. So far as the deposit under section 20 (4) of the Act is concerned he has deposited to the extent of Rs. 1000/- only after the due date i.e. in the month of June 1997, and as such no benefit can be given to the petitioner with regard to the deposit which was made after the due date. The trial court, therefore, has passed the decree for eviction.

9. The petitioner preferred the revision, the Revisional Court has also confirmed the decree for eviction passed by the trial court. The revisional court has also recorded the finding that the petitioner is in arrears of rent from 1-7-1993, which he has not paid. The revisional court has further recorded a finding that the burden lies on the defendant to prove that he has paid the rent. The findings to that effect are quoted below :-

7- it is settled law that burden to prove the rate of rent was squarely on the landlord. He has not discharged his burden in accordance with law. Admittedly no receipt of rent was issued by the landlord/tenant. There is no other document filed by him which could support that the rat eof rent was Rs. 250/- and not Rs. 40/- per month as alleged by the defendant/tenant. P.W. 1 is Sri Onkar Singh, the son of the landlord Sri Bhagat Singh.

10- In order to prove the defendant is a defaulter of the plaintiff Sri Omkar Singh has come in the witness box as PW 1 and has deposed that his father is of 91 years of age. He has also proved that the defendant is in arrears of rent. His statement is quoted below:

जब प्रतिवादी ने किराया बढाया था तो उस समय अशोक कुमार भी मौजुद था। प्रतिवादी ने जुलाई 1993 से किराया नही दिया। तब हमने प्रतिवादी को 31.8.95 को किराया बेदखली का नोटिस भेजा था। जो उन्हें मिल गया। प्रतिवादी ने उस नोटिस का जबाब भी दिया था। मैने नोटिस की कार्बन कापी पोस्टल रसीद ए0डी0 दाखिल की है। इस पर प्रदर्श 2,3, व 4 डाला गया।

फिर भी उन्होंने न तो किराया दिया और न मकान खाली किया। प्रतिवादी ने एक मनी आर्डन डाक के द्वारा भेजा था पता नही कितने रूपये का था जो हमने नही लिया।

11. Similar statement has been made by Ashok Kumar/PW-2 to the following effect:

वादी के लड़के ने किराया बढ़ाने को कहा था तथा का था कि नहीं तो खाली कर दो। इस पर उन्होंने 250/– माहवार किराया तय कर लिया। मेरे सामने प्रतिवादी ने वादी व लड़के को 250/– दियेा। तथा प्रतिवादी ने डायरी में किराया नोट कर लिया।

मैं ओंकार के मकान से थोड़े फासले पर रहता हूँ। ओंकार और मैं एक ही जाति के हैं। ओंकार गांव का प्रधान भी है। जब शुरू में वादग्रस्त सम्पत्ति में गयी थी उस समय कितना किराया था मुझे मालूम नहीं। जनवरी 1990 के 2 या 3 जनवरी 1998 के किराया बढ़ाया गया था पैसे 250/– प्रतिवादी ने मेरे सामने दिये थे किराया बढ़ाने के बारे में बात हुई थी इसलिए 250/– किराये के ही थे मुझे इस बात की जानकारी नहीं है कि रामकुमार पहले 40/– किराये पर था।

1998 में जब किराया दिया गया था उस समय रामकुमार के परिवार वाले नहीं थे केवल नौकर थे उस समय वहाँ दो या तीन आदमी थे।

डोईवाला नूनावाला से 4 के0एम0 दूर है। जनवरी 1990 में मैं गेंहूँ का बीज लेने ओंकार के पास आया था।

विवाद ग्रस्त सम्पत्ति में प्रतिवादी के पास एक ही कमरा दिया जब 250/– दिये थे जो कमरे में बैठकर दिये थे। कमरे में दरवाजा लगा है ऊपर चढ़ने के लिए पतला सा जीना है।"

12. The counsel for the petitioner has referred the judgment of ***Kripa Dutt Bhatt Vs. VIIth A.D. and S.J., Bareilly A.R.C. 1984(2) 259*** to the following effect:-

1. "This tenant's petition arises out of suit filed by opposite parties for arrears of rent and ejectment. It was dismissed by trial court but decreed in appeal. Entire controversy hinged on if petitioner was in arrears of rent. No documentary evidence was produced. Reliance was placed on oral testimony of the attorney who has authorised to release the rent on behalf of landlady. On the other hand according to petitioner he had paid the rent to the attorney and no amount was due. While the suit was pending on instruction from trial court, the petitioner produced a diary which according to trial court established that payment were made regularly by the petitioner. In revision it was held that diary was not admissible as it was not maintained in ordinance course of business. The revising authority further held that burden of proof whether petitioner was in arrears or not was not him. It is against this order that petitioner has come to this court.

2. Finding that diary was not admissible appears to be well founded. The findings that it was not maintained in ordinary course of business has not been challenged.

At the same time the revising authority committed an error in placing burden on opposite parties by first assuming in favour of landlady without appreciating the deposition of attorney and then observing that it was on petitioner to rebutt it. Further even assuming that the trial court committed some error, the revising authority should have remanded the case for deciding it afresh after considering the oral evidence led by the parties. As it did not do so and proceeded to decree the suit straightway by erroneously placing burden on petitioner and without discussing evidence the order cannot be maintained."

13. The aforesaid judgment has no application in the present case in as much as the attorney of the plaintiff has fully proved that the defendant was in arrears of rent and he has filed to deposit the rent.

14. Relying upon the decision of ***Madan Mohan and another vs. Mohan Kumar Sood 1993 SC FB 133 (SC)*** in ***Mohd. Naeem V. IIIrd Additional District Judge, Lucknow, report in 1997 (2) A.R.C.***, it has been held as under:-

"21. As pointed out by the Apex Court in its decision in the case of Madan Mohan and another Vs.

Mohan Kumar Sood, reported in 1993 (1) JT 162 : 1993 SCFBRC 133 (SC), whatever protection the Rent Acts give they do not give blanket protection for non-payment of rent. This basis minimum has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent he cann continue to enjoy the same without payment of rent.

22. In the aforesaid View of the matter, the petitioner once having been informed that he had fallen in arrears in regard to payment to rent for more than the requisite period, was duty bound to clear the arrears if any by tendering the same to the landlord or deposit of the same in Court as provided under the Act, if he wanted the protection of the Act. He could not just ignore the notice on the ground that it contained an inflated demand and on that ground continue to enjoy the accommodation let out to him without payment of rent, it may be observed that once after receiving the notice informing the tenant that he has been defaulting in the payment of rent for the prescribed period and he may be evicted, the tenant in order to same his default, if there be any, must pay the rent due according to him, to the landlord or deposit the same in accordance with the provisions of the Act otherwise he has to face the

consequences. This it seems to of both the landlord and the tenant, maintaining a just balance between their competing interest."

15. So far as burden of proof is concerned, it has been held that burden lies on the tenant to prove that he has paid the rent.

16. In view of the aforesaid statement as well judgments of the Apex Court, burden lies on the tenant to prove that he has paid the rent. The petitioner has failed to discharge his burden.

17. Counsel for the petitioner has submitted that the landlord himself has not come in the witness box, only it is not necessary that the plaintiff has come in the witness box. Further the attorney of the plaintiff has proved that the plaintiff is aged about 91 years and further the defendant having failed to pay the rent in spite of the notice issued to him, there is no requirement that the plaintiff himself should come in the witness box.

18. In ***Smt. Ranjana Devi V. VIIth ADJ, Moradabad, reported in A.R.C. 1999 (1)*** the application

was filed for release of the accommodation under Section 21(1) (a) of the U.P. Act NO. 1972, the question was raised that the landlord himself has not come in the witness box. It has been observed as under:-

> *"The law does not require that the person for whose benefit the accommodation is required, must file affidavit and in absence of such affidavit the version of the landlord cannot be accepted unless it is established that the person for whose benefit the need is set up has made averments contrary to the case set up by the landlord in the application. In Harbans Lal Gupta V. IInd Additional District Judge, Janunpur and others, 1988 (2) ARC 458, it was held that if the landlady filed an application for release for the need of her son, the mere fact that the son of the landlady had not filed an affidavit cannot be a ground for rejecting the version of the landlady that the need for the son was not bana fide. Similar view was expressed in Mohd. Idrish Mekran V. District Judge, Gorakhpur and others, 1996(1) ARC 463."*

19. Relying upon the judgment of ***Waryam Singh v. Amarnath, AIR 1954 SC 215 and Babhutmal Raichan Oswal v. Lamibai R. Tarte, AIR 1975 SC 1297*** in ***Mrs.***

Rena Drego Vs. Lalchand Soni AIR 1998 SC 1990, it has been held that as under:-

> *4 "According to us, the High Court has traversed for beyond the limit of the supervisory jurisdiction under Article 227 of the Constitution when the learned single judge reversed the decree of eviction which was based on findings of facts arrived at by the fact finding authority upon the evidence on record. It would have been well for the High Court to remind itself that it was not exercising certiorari jurisdiction under Article 226 of the Constitution but a supervisory jurisdiction under Article 227 which obliges the High Court in confine to the scrutiny of records and proceedings of the lower tribunal. By relying on fresh material which were not before the tribunal the High Court should not have disturbed findings of facts in exercise of such supervisory jurisdiction. It is now well nigh settled that power under Article 227 is on of judicial superintendence which cannot be used to upset conclusions of facts, however erroneous those may be, unless such conclusions are so perverse so unreasonable that no Court could ever have reached them. Way back in 1954, a Constitution Bench of this Court, in Waryam Singh V. Amarnath, AIR 1954 SC 215, has pointed out that the power of superintendence*

conferred by Article 227 should be exercised "most sparingly and only in appropriate case in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.

5 The said decision was made in an appeal which considered an order passed by a Rent Control Court. Quoting the aforesaid dictum a three judge Bench of this Court has in Babhutmal Raichand Oswal V. Laxmibai R. Tarte, AIR 1975 SC 1297 observed thus :

"The power of superintendence of High Court under Article 227 being extraordinary is to be exercised most sparingly and only in approapriate cases. The power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot, in guise of exercising its jurisdiction under Art. 227, convert it self into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Art. 227, interfere with findings of facts recorded by the subordinate Court or tribunal. Its function is limited to seeing that the subordinate Court or tribunal functions within the limits

of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it."

20. *In* ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675****, the Apex Court has held as under: -*

"Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

A patent error is an error which is self- evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High

Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a letter stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

21. Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675***, the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682,*** has held under: -

" As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in ***Surya Dev Rai*** *that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."*

22. The aforesaid statement and the findings recorded by both the Courts below being finding of fact, no interference can be made under Article 226/227 of the Constitution of India.

23. In view of the above, I find no infirmity in the orders passed by the courts below while exercising the jurisdiction under Article 226/227 of the Constitution of India.

24. The petitioner has sought time to vacate the premises. The petitioner is allowed time upto 31st March, 2007 to vacate the premises provided :-

(a) he furnishes undertaking by or before 30th September, 2006 to vacate the premises by or before 31st March, 2007.

(b) The petitioner pays the entire rent and damages due up to date by 30th September, 2006.

(c) The petitioner pays regularly the damages by 1st week of every month.

(d) In case of failure of the aforesaid conditions, the respondent no. 3/landlord shall be at liberty to execute the decree forthwith.

23. Consequently, writ petition is dismissed. No order as to costs.

Dated 05.09.2006 **Rajesh Tandon, J.**

Rathour